SUPREME COURT, U. S.

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BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

No. 74-560

ARMANDO RENDON
and
CARLEEN JOYCE, *Petitioners,*

v.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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QUESTION PRESENTED

Whether that portion of an Act of Congress, codified as D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974), relating to the District of Columbia, which requires that, in order for a candidate to be placed on a party primary ballot for the office of member of the District of Columbia Council from a ward, the candidate must obtain on a nominating petition the signatures of not less than 250 registered members of that party residing in the ward, is unconstitutional as applied to petitioners.

PRELIMINARY STATEMENT

This case arises from a final judgment of the District of Columbia Court of Appeals, the highest court of the District of Columbia. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by this Court pursuant to 28 U. S. C. § 1257 (1970). See D. C. Code, 1973, § 11-702.

Petitioners seek review of the order of the District of Columbia Court of Appeals upholding respondent's rejection of petitioners' nominating petitions for failure to have the requisite number of signatures. Respondent is not in disagreement with the statistics concerning registration of various political parties, including the D. C. Statehood Party, as presented in the petition.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners have failed to present any substantial federal question warranting review by this Court.

Contrary to the assertions of the petitioners, the ruling below was consistent with previous rulings of this Court. This is not a case which raises a question as to whether the total pattern of the District of Columbia's election laws denies petitioners' constitutionally protected rights, but rather whether a single requirement, relating to the minimum number of petition signatures required in order to be a candidate in a party primary election, unduly burdens petitioners' First Amendment rights. As the Court recently stated in *Storer* v. *Brown*, 415 U. S. 724, 737 (1974):

> "* * * Although *Williams* v. *Rhodes*, 393 U. S., at 34, spoke in terms of assessing the 'totality' of the election laws as they affected constitutional rights, if a candidate is absolutely and validly barred from the ballot by one provision of the laws, he cannot challenge other provisions as ap-

> plied to other candidates. The concept of 'totality' is applicable only in the sense that a number of facially valid provisions of election laws may operate in tandem to produce impermissible barriers to constitutional rights. * * * "

In this light, the particular challenged section must be examined to determine whether its application alone is constitutionally permissible. D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974), provides:

> "Each individual in a primary election for candidate for the office of member of the Council (other than the chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 1-1107, and who are of the same political party as the nominee."

It is beyond question that the legislature of a jurisdiction, in the case of the District of Columbia the United States Congress, may make reasonable regulations governing access to the ballot and listing by party affiliation. As the Court stated in *Jenness* v. *Fortson*, 403 U. S. 431, 442 (1971):

> "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election. * * * "

For the District of Columbia, the Congress has legislated two types of tests of support for City Council candidates seeking ballot position via nomination by those parties qualified to choose candidates through primary elections. These different tests reflect the fact that some officials are elected citywide while other officials are elected from wards. For candidates seeking citywide offices, the number of petition signatures required is one percent of the voters registered as members of the party involved or 2000, whichever is less. For candidates seeking to represent one of the eight wards of the city, the test is a fixed minimum number of signatures. D. C. Code, 1973, § 1-1108 (i)(1) and (2) (Supp. I, 1974).

Before a political party is entitled to nominate candidates through a primary election, a candidate of the party must have drawn at least 7500 votes in the next preceding election. D. C. Code, 1973, § 1-1108(h)(2) (Supp. I, 1974). Since the 7500 votes need not be proportionately drawn from each ward of the city, a party may be able to garner sufficient votes to qualify to conduct a primary election, yet have no substantial support in one or more individual wards. Congress, in its wisdom, therefore required that a ward candidate, seeking a place on his party's primary ballot, must secure on a nominating petition the signatures of at least 250 party members residing in the ward. D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974). Plainly, Congress determined such requirement to be necessary and reasonable to insure that candidates running for ward office preliminarily demonstrate a significant modicum of party support in their wards, and further that candidates not representative of a party are not deceptively labeled as party candidates. *Jenness* v. *Fortson, supra,* makes clear that such a minimal preliminary showing of support legitimately furthers the important interests of avoiding "confusion, deception, and even frustration of the democratic process." 403 U. S. at 442.

Petitioners contend, however, that the 250 signature requirement is unduly burdensome because it requires a number of signatures which, when expressed as a percentage of the available pool of registered D. C. Statehood Party members, is in excess of the maximum percentages permitted by this Court. The cases relied upon by petitioners, however—*Storer* v. *Brown, supra; American Party of Texas* v. *White,* 415 U. S. 767 (1974); *Jenness* v. *Fortson, supra;* and *Williams* v. *Rhodes,* 393 U. S. 23 (1968)—all dealt with signature requirements determined by percentages of the votes cast in the preceding election or percentages of total registered voters, not with percentages of party membership. More importantly, petitioners cannot, as they attempt to do, characterize the issue as a percentage issue. The statutory provision applicable to them does not apply a percentage test, but a fixed, minimum number test. In *American Party of Texas* v. *White, supra,* the Court dealt with a 500 signature minimum limit and stated that the argument that such a requirement "is unduly burdensome approaches the frivolous." 415 U. S. at 789. The fixed, minimum number test is burdensome to petitioners only because of the extremely low number of voters registered as members of their party. Although the D. C. Statehood Party has been fielding candidates since March 1971, when the citizens of the District of Columbia first voted to send a non-voting Delegate to the House of Representatives, nevertheless, as of October 6, 1974, the D. C. Statehood Party has been able to persuade only 1515 voters to register as members of the party, out of a total of more than 272,000 registered voters in the District of Columbia. Plainly, the remedy to petitioners' problem lies in their own hands, namely, to organize and work to increase their party's registration rolls. As the Court observed in *American Party of Texas* v. *White, supra,* 415 U. S. at 787: "Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization."

In sum, petitioners cannot rely on their party's lack of effort or lack of success in recruiting new party registrants to demonstrate that the modest 250 signature requirement establishes a constitutionally impermissible barrier between them and ballot status under their party's banner. The 250 signature requirement expressed in D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974), is tied to the "particularized legitimate purpose" of requiring candidates of qualified parties to make "some preliminary showing of a significant modicum of [party] support." *Rosario* v. *Rockefeller,* 410 U. S. 752, 762 (1973); *Jenness* v. *Fortson, supra,* 403 U. S. at 442. The purpose being legitimate, the statutory provision must be sustained.

Finally, it is important to note that even if petitioners' efforts to build up their party's registration rolls do not meet with sufficient success to enable them to obtain ward ballot status under the D. C. Statehood Party banner, nevertheless petitioners are not precluded from obtaining ballot status. Under District law, petitioners can change their party registration to independent and obtain a place on the general election ballot by filing nominating petitions containing signatures of 500 registered voters residing in the wards from which they seek election. D. C. Code, 1973, § 1-1108(j)(1) (Supp. I, 1974). As independent candidates, petitioners would have a very substantial pool of possible petition signers. Any registered voter residing in the ward an independent candidate seeks to represent may sign such candidate's nominating petition regardless of the signer's party registration and regardless of whether the signer has signed any other nominating petition. Moreover, it is not disputed that petitioners, even while running as independents, can nevertheless espouse the political goals of the D. C. Statehood Party and can be publicly endorsed by that party. Thus, petitioners' assertion that the District's election laws deprive them of their First Amendment free speech and assembly rights is wholly insubstantial.

CONCLUSION

Because petitioners have presented no question of substance calling for the exercise of the Court's certiorari jurisdiction, it is respectfully submitted that the petition for writ of certiorari to the District of Columbia Court of Appeals should be denied.

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